

By decision dated March 8, 2019, OWCP denied appellant's claim. It noted that he alleged that he was retaliated against due to his questioning of upper management decisions, his race, and preexisting conditions. OWCP found that the evidence of record was insufficient to establish that the injury and/or events occurred as alleged. It explained that "after review of hundreds of documents we did not find any proof of such allegations of retaliation or discrimination." OWCP also found that there was no medical evidence from a psychiatrist or clinical psychologist with a

narrative or medical rationale that appellant developed an emotional condition as a result of his federal employment, rather than his preexisting conditions. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 13, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on July 26, 2019.

In an August 29, 2019 post-hearing statement, appellant asserted that he was concerned that the "extreme focus" during his hearing was on retaliation and OWCP ignored other parts of his claim. He listed additional alleged employment factors including that his workload increased in October 2017; denial of overtime on Martin Luther King, Jr.'s birthday in January 2018; a January 19, 2018 meeting with his supervisor; a January 30, 2018 Administrative Investigative Board hearing, and a January 31, 2018 letter of reprimand he received for sending his American Disabilities Act representative e-mails from his work email account. Appellant also referred to events during the period July to August 2018 pertaining to a request for reasonable accommodation regarding his interactions with his supervisor.

In a November 1, 2019 decision, OWCP's hearing representative vacated the March 8, 2019 decision. The hearing representative noted that the issue was whether appellant sustained an emotional or stress-related condition in the performance of duty. The hearing representative found that appellant had provided multiple documents and a comprehensive account of the claimed work factors, including increased workload, reasonable accommodation request denials, supervisory/management/agency retaliation, discrimination, and harassment. The hearing representative noted that OWCP had not fully addressed the evidence of record, discussed any specific work factors, or explained why the evidence was insufficient to establish compensability of the claimed factors under FECA. The hearing representative indicated that OWCP should review the evidence of record and identify whether any of the alleged factors was a compensable factor of employment, why any specific factor was or was not in the performance of duty, and whether any factor was or was not factually substantiated.

By decision dated December 20, 2019, OWCP found that appellant's claimed factors were the result of his own emotional reaction to regular or specifically assigned duties or requirements imposed by the employing establishment and were not related to his work as a management analyst. It denied his claim on the factual component of the third basic element, fact of injury, because the evidence did not support that the injury and/or events occurred. OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

The Board, having duly considered this matter, concludes that this case is not in posture for decision.¹ FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as it considers necessary with respect to the

¹ *N.M.*, Docket No. 17-0262 (issued July 3, 2017).

claim.² The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.³

The claims examiner should distinguish between those which are factors of employment and those which are outside the scope of employment for purposes of compensation by outlining work-related and nonwork-related elements.⁴ These should be labeled as alleged events that are factors of employment, alleged events that are not factors of employment, and compensable factors which are not factually substantiated. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must then base its decision on an analysis of the medical evidence.⁵

The Board finds that OWCP's December 20, 2019 decision did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining its disposition, so that appellant could understand the basis for the decision, as well as the precise defect and the evidence needed to overcome it.⁶ On September 11, 2018 appellant submitted a statement outlining specific employment factors which he alleged caused an emotional condition. While the OWCP hearing representative specifically remanded the case for OWCP to review the evidence of record and make the necessary findings, the Board finds that the December 20, 2019 decision did not do so. OWCP summarily denied the claim without explaining why the specific factor were not substantiated or compensable.

On remand OWCP shall make findings of fact as to whether the evidence of record establishes that any alleged events occurred as alleged, and if so, whether they constitute compensable factors of employment.⁷ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* merit decision.⁸

² 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.126.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013). *See also G.S.*, Docket No. 14-1933 (issued November 7, 2014).

⁴ *Id.* *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.804.17.(j) (July 1997).

⁵ *Robert Breeden*, 57 ECAB 622 (2006).

⁶ *K.J.*, Docket No. 14-1874 (issued February 26, 2015); *see also J.J.*, Docket No. 11-1958 (issued June 27, 2012).

⁷ *A.R.*, Docket No. 11-1949 (issued April 16, 2012).

⁸ *C.W.*, Docket No. 14-0693 (issued January 12, 2016).

IT IS HEREBY ORDERED THAT the December 20, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: May 24, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board